IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

OP.No. 17638 of 1998(Y)

PETITIONERs:

CATHOLIC SYRIAN BANK STAFF ASSOCIATION, MANNADIAR LANE, TRICHUR, REPRESENTED BY ITS GENERAL SECRETARY.

BY ADV.
SRI.T.C.KRISHNAN

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY FOR LABOUR, NEW DELHI.

2. CATHOLIC SYRIAN BANK LIMITED, TRICHUR, REPRESENTED BY ITS CHAIRMAN.

By ADV. SHRI. K.RAMKUMAR FOR R1.
BY ADV. SRI.K.ANAND (A.201) FOR R2

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 17638/98

APPENDIX

Petitioner's Exts.

Ext.P1 true copy of the failure report of the Conciliation Officer dated 27.7.1991.

Ext.P2 true copy of the letter from the Bank to the Labour Department dated 21.2.1991.

Ext.P3 true copy of the order of the Central Government dated 13.11.1991.

Ext.P4 true copy of the judgment of the High Court in O.P.No.2423/92 dated 6.2.1998.

Ext.P5 true copy of the order of the Central Government dated 21.4.1998.

Antony Dominic, J.

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O.P.No.17638 of 1998

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Dated this the 7th day of February, 2007.

JUDGMENT

This writ petition is filed seeking to quash Ext.P5, an order issued by the first respondent declining to refer an industrial dispute raised by the petitioner. It would appear that the claim was raised by the petitioner on behalf of a section of the workmen of the second respondent – Bank for reckoning the training period undergone by them prior to their regular appointment for all purposes. The period in relation to which the claim was raised ranges from 1970 to 1986 and from 1986 the system of training prevalent then was discontinued by the Bank. Since 1986 initial appointment is on probation followed by confirmation unlike in the past. On failure of conciliation, the Conciliation Officer has submitted Ext.P1 failure report to the first respondent, being the appropriate Government and considering the failure report so submitted by Ext.P3 the first respondent had declined to refer the dispute for adjudication.

2. Ext.P3 was challenged before this Court in O.P.No.2423 of 1992, which was disposed of by Ext.P4 judgment quashing Ext.P3 and

directing the first respondent to consider the application for reference and take a fresh decision expeditiously as directed therein. It was held that while exercising the power under Section 12 of the Industrial Disputes Act, the appropriate Government is not entitled to enquire into the merits of the dispute and as such Ext.P3 was quashed.

3. Pursuant to Ext.P4 judgment, the first respondent reconsidered the matter and it is thereafter that Ext.P5 was issued once again declining to refer the dispute on the ground that the dispute has been raised belatedly and without justifiable reasons. Impugning Ext.P5 order, counsel for the petitioner submitted that the reason assigned in Ext.P3 touches on the merits of the dispute and therefore, the first respondent has illegally exercised its powers by declining to refer the dispute. According to him, what has been done by the first respondent is impermissible in law and therefore, Ext.P5 order has to be quashed by this Court.

4. On behalf of the second respondent – Bank, learned counsel for the second respondent submitted that under Section 12 of the Industrial Disputes Act the first respondent is entitled to examine prima facie the merits of the dispute and that on such examination the first respondent found that the dispute did not merit adjudication. According to him, the first respondent was well within its powers to

decline reference of a dispute if the issue is raised belatedly. He has also made reference to the judgment of the Supreme Court in **Bombay Union of Journalists and Ors** v. **The State of Bombay & Anr.** - A.I.R. 1964 S.C. 1617 and made particular reference to paragraph 6 thereof. In the aforesaid judgment it has been held that if the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference.

5. As pointed out above, the claim which is the subject matter of the dispute is for addition of the training period undergone by a section of the employees of the second respondent – Bank during the period 1970-1986. Although the union has a case that they had raised a dispute earlier and that the dispute was kept alive by them, the said statement of the union is seen disputed by the Bank in the reply filed by it before the Conciliation Officer, reference to which has been made in Ext.P1. Such being the situation, in the absence of any material on record I am not in a position to conclude that the issue was kept alive by the union as contended by the counsel. I see no reason why the issue raised by the petitioner is made subject matter of an industrial dispute at this distance of time.

6. In my view, the appropriate Government is entitled to examine prima facie whether a dispute merits adjudication by the

Tribunal, although examination on the merits of the dispute is beyond its power. Such being the position, it cannot be contended that irrespective delay involved, the appropriate Government was obliged to make reference of the dispute. Further reference of this dispute at this point of time will only unsettle settled issues and therefore will not be in the interest of the workmen themselves.

For the aforesaid reasons, I uphold Ext.P5 and dismiss the writ petition. No costs.

Antony Dominic
Judge.

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